

**HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE M. VENKATESHWARA REDDY**

W.P.NO. 6507 OF 2006

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Dt. 04.09.2006

Between:

Mohammed Rafi

...Petitioner

and

The Director General & Inspector General of Police, AP,
Hyderabad and others

...Respondents.

**HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE M. VENKATESHWARA REDDY**

W.P.NO. 6507 OF 2006

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ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

This is yet another writ petition for habeas corpus in which a person is missing from 21st March, 2006 and the police has not been able to locate him. This case assumes importance in view of the fact that the person who is missing viz., Mohammed Feroz Khan @ Baba is admittedly an innocent person and is a witness in a case involving security of the State.

The petitioner who is the brother of Feroz Khan submitted that the said Feroz Khan was working as cashier in Reeds Hotel, besides Vishnu Theatre, Vanasthlipuram, Hyderabad, his duty hours were from 5.30 A.M. to 3.30 P.M. Since he was doing his work with seniority and honesty, owner of the hotel had entrusted additional duties to him and he was going to the hotel around 11.00 P.M. every day and would stay overnight after taking accounts from the staff and then would open the hotel at 5.30 A.M. At 3.30 P.M. he would come back to home. On 21.3.2006 Feroz Khan left his house at about 6.00 P.M. to offer prayers

in a mosque at Moosarambagh and did not return home thereafter. When the petitioner came back to his house at about 9.00 P.M. he was informed by his mother that Feroz Khan had not returned home. The petitioner and his mother thought that since Feroz Khan was running a hotel, he might have gone to the hotel early. On the next day at about 6.00 P.M. the hotel owner visited the residence of the petitioner and inquired about the whereabouts of Feroz Khan. The owner of the hotel informed the petitioner's mother that Feroz Khan had not attended his duties on 21.3.2006. The petitioner's mother contacted her brother Mohammed Aleem who came from Suryapet to Hyderabad on 25.3.2006. It was revealed to him by the hotel owner that Feroz Khan had been taken away four months before by 2nd respondent, he had been interrogated for about two hours to know about the activities of two persons viz., Zahed and Kaleem, and Feroz Khan had told the police that he had some knowledge of these two persons who were coming to the hotel and because of their regular visits, there was some intimacy of Feroz Khan with Zahed and Kaleem, and he also knew their names and place of residence, but he did not know about their activities. It was also revealed that Asst. Commissioner of Police had put up a constable on guard over the movements of Feroz Khan. On instructions of 2nd respondent, the police constable used to sit in the hotel for some time to keep a watch on the activities of people who visited the hotel. The hotel owner also told him that the 2nd respondent had informed him that though he had incriminating information against Zahed and Kaleem, but there was no incriminating information against Feroz Khan and Feroz Khan was being used as a witness in the case against Zahed and Kaleem. The petitioner suspected that the 2nd respondent knew about the whereabouts of Feroz Khan. He believed that either Feroz Khan was in the custody of 2nd respondent or they had the knowledge about his whereabouts because whenever he approached the police, they gave evasive replies. It was contended that even if Feroz Khan was a witness, he could not have been

arrested.

Counters were filed and the detention of Feroz Khan was denied. However, it was accepted that Feroz Khan was a witness in the matter.

We passed several orders in this case with hope that the police would be able to find out the missing person, but to no avail. An order was passed earlier for presence of the Director General of Police also. He appeared, but submitted that in spite of the best efforts, the respondents could not secure the presence of the missing person. We passed a detailed order on 8.6.2006, the order is reproduced below,

“The alleged detenu/missing person is a witness in Cr.No.1037 of 2005 of Panjagutta Police Station. This case relates to subversive activities and the accused in that case were accused of having hurled bombs. The missing person is a witness in the case. He was examined as a witness by the Special Investigating Officer investigating Cr.No.1037 of 2005 on 21-12-2005. Charge sheet in that case has been filed before the competent court on 20-03-2006. From 21-03-2006, the person is missing. Admittedly, he is an innocent person and is a witness in a case which concerns the security of the State. Police is supposed to protect everybody more so, a person who is a witness in a case which has great ramifications on the security of the country. This Court earlier ordered production of the alleged detenu/missing person, but he was not produced. On 21-04-2006, the Court ordered production of the alleged detenu. It also directed that if the detenu was not produced, the Director General of Police shall remain present in the Court. He appeared on 28-04-2006. The Court gave him time to produce the detenu on the next date. His presence was also exempted. Detenu was not produced, Director General appeared. Case came up on 05-06-2006 and a request was made for adjournment till today. Today, an affidavit has been filed in which it has been stated that a special team was constituted in accordance with the orders of this Court and the head of the special team in his affidavit has stated that he had made all efforts to trace the missing person, but so far he has not been able to do so. Case diaries are not available with the learned Special Government Pleader appearing nor any officer of the Police Department is present in the Court to answer any queries from this Court.

This is a matter which is taken very lightly by the respondents, although this Court views the matter very seriously because if the person missing is not found, it will have ramification in many cases including the case registered under Cr.No.1037 of 2005, which involves the security of the State. If we are not able to protect witnesses in such sensitive matters, then subversion and terrorism cannot be stopped as nobody can be successfully prosecuted. If this witness is not found, it could be anybody's guess what will be the fate of the case in which such a person was a witness. We are also worried about the life of the witness because he was appearing as a witness in a sensitive case and it can be reasonably apprehended that there might be some danger to his life. This case involves very important questions with regard to the Criminal Judicial System.

Therefore, we request Sri Padmanabha Reddy, Senior Advocate present in the Court to assist us as to what course of action this Court should take in this case. In the meantime, the head of the investigating team who has filed the affidavit shall remain present in the court on the next date of hearing along with the case diary and other relevant record.

List on 13-06-2006. The copies of necessary papers may be handed over to Sri Padmanabha Reddy."

The matter was again heard and at our request, Mr. C. Padmanabha Reddy was also heard, the learned Advocate General was also heard. There are dozens of cases of missing persons pending in Courts and there is a growing trend of persons missing and police not finding them. We expressed our concern and expressed it in our earlier orders also. The added concern is that Feroz Khan is a witness in a case involving security of the State. There are only three possibilities, (1) either the police has kept him in order to ensure that he deposes in the Court during the trial or; (2) he has been taken away by persons against whom he was likely to depose and (3) that on his own, because of scare of the police or of the accused in the case in which he is a witness, he is hiding himself. In all these three situations it is very important that the person should be found out. Besides police and

the Courts are responsible for the security of each and every citizen and if they fail to do so, the whole system will collapse. Some of the Advocates appearing in the matter suggested that the matter be handed over to CBI so that the person could be found out. The learned Advocate General has no objection to that. But it is also submitted by Mr. C.Padmanabha Reddy that it may not serve any purpose because the CBI has not the requisite staff and infrastructure at Hyderabad and if the special police teams of the Government have failed so far to locate the missing person, it may not be possible for the CBI to do so. In this view of the matter, we feel that the State police is best equipped to find out the missing person or inform the Court at least as to what happened to the missing person. Therefore one more chance be given to the State police to investigate the matter and produce the missing person in this Court. However, we have seen the case diaries, perused the records and we do not find that the special investigating team which has been constituted had done its job with diligence.

Therefore we direct the Commissioner of Police, Hyderabad to investigate the matter and take all steps that are necessary to find out the missing person and produce him in the Court. The Commissioner of Police will be at liberty to constitute a team or personally supervise the investigation in the matter. We are aware that the Commissioner of Police is a busy person, therefore he may not be able to personally investigate the matter, but we direct that he shall supervise the matter personally and see that the missing person is produced before this Court as and when found. However, the Commissioner of Police, Hyderabad shall give to this Court a report, in duplicate, in two sealed covers through Registrar (Judicial) every two weeks till further orders. The reports, as and when filed, shall be shown to us in chambers.

BNJ

MVRJ

Dt.04.9.2006
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